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Briefs and Other Related Documents

United States Court of Appeals,
Eleventh Circuit.

Joseph G. GIVENS, an individual,
Plaintiff-Appellant,
v.
ALABAMA DEPARTMENT OF CORRECTIONS, Michael W. Haley, individually, et al.,
Defendants-Appellees.

No. 03-14086.

Aug. 18, 2004.

Background: Former inmate who participated in work release program brought §1983 action, alleging that Department of Corrections policy prohibiting inmates from receiving interest on wages deposited in bank accounts constituted an unlawful taking. The United States District Court for the Northern District of Alabama, No. 03-00484-CV-S-NE, C. Lynwood Smith, Jr., J., dismissed claims. Inmate appealed.

Holding: The Court of Appeals, Black, Circuit Judge, held that policy was not an unconstitutional taking, in light of fact that no property interest existed.

Affirmed.

West Headnotes

[1] **Federal Courts** ⚿776

170Bk776 Most Cited Cases

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Court of Appeals reviews the district court's dismissal of a complaint for failure to state a claim de novo.

[2] **Eminent Domain** ⚿**81.1**

148k81.1 Most Cited Cases

To state a takings claim under either federal or Alabama law, a plaintiff must first demonstrate that he possesses a property interest that is constitutionally protected; only if the plaintiff actually possesses such an interest will a reviewing court then determine whether the deprivation or reduction of that interest constitutes a taking. U.S.C.A. Const.Amend. 5; Ala.Const. Art. 1, § 23.

[3] **Eminent Domain** ⚿**81.1**

148k81.1 Most Cited Cases

The Takings Clause protects private property, rather than creating it; thus, to determine whether a particular property interest is protected, the court looks to existing rules or understandings that stem from an independent source such as state law. U.S.C.A. Const.Amend. 5.

[4] **Eminent Domain** ⚿**2.39**

148k2.39 Most Cited Cases

[4] **Eminent Domain** ⚿**81.1**

148k81.1 Most Cited Cases

Alabama's policy prohibiting inmates from receiving interest that accrued on their wages from work release deposited in bank accounts did not violate takings clause of federal or state constitutions; inmates had no common law property right in the interest and only a limited property right in the principal under Alabama law, and no property interest was created by statute, regulation, or policy.

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U.S.C.A. Const.Amend. 5; Ala.Const. Art. 1, § 23; Ala.Code 1975, § 14-8-6.

***1064** Donald A. Chapman, Decatur, AL, for Plaintiff-Appellant.

Kevin Christopher Newsom, Montgomery, AL, Andrew Weldon Redd, AL Dept. of Corrections, Montgomery, AL, for Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

Before BLACK and KRAVITCH, Circuit Judges, and STROM [FN*], District Judge.

FN* Honorable Lyle E. Strom, United States District Judge for the District of Nebraska, sitting by designation.

***1065** BLACK, Circuit Judge:

Alabama inmates participating in work release have part of their wages deposited by the state's Department of Corrections (the Department) in bank accounts in their names. Although interest accrues on these accounts, Department policy prohibits inmates from receiving it. Appellant Joseph G. Givens, a former work release participant, filed suit under 42 U.S.C. § 1983, claiming the Department's policy violated both federal and state law. In particular, Givens argued the Department's policy constituted an unlawful taking. The district court dismissed the action for

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failure to state a claim, and we affirm.

I. BACKGROUND

Alabama statutorily authorizes the Department to adopt regulations and policies establishing a work-release program for persons incarcerated by the state. *See* Ala.Code § 14-8-2. This authority is constrained by several relevant limitations. First, any wages earned by an inmate must be paid directly to the Department. *Id.* § 14-8-6. Second, the Department may withhold part of the wages received, but the withholding cannot exceed a set percentage of the total wages earned. *Id.* Third, the remainder of an inmate's earnings--less any withdrawals made by the inmate during incarceration--must be paid to the inmate upon release. *Id.*

Pursuant to its statutory authority, the Department implemented a work release program. This program is described in Administrative Regulation No. 410, which provides that, after the Department has withheld its percentage of an inmate's earnings, [FN1] the remainder is to be deposited in a Prisoner Money on Deposit (PMOD) account in the inmate's name. Dep't of Corr. Admin. Reg. No. 410, § VII.B (Sept. 2, 1997).

FN1. At present, the Department is authorized to withhold up to 40 percent of each inmate's earnings. Ala.Code § 14-8-6. Prior to 1992, this percentage was lower.

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In Alabama, PMOD accounts are administered in accordance with the Department's *Manual of Accounting Procedures for Institutions and Community Based Facilities*, which specifically states that "inmates are not entitled to receive interest on PMOD accounts." [FN2] Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26.

FN2. The Department uses the interest that accrues on the PMOD accounts to (1) offset the costs of administering the accounts, and (2) fund various recreational activities for the inmates.

Givens was incarcerated in Alabama from 1986 until his release in 2002. During this time, he participated in the Department's work-release program. The wages he earned were paid directly to the Department, and, after the Department withheld its percentage, the remainder was deposited in a PMOD account in his name. Upon his release, Givens was paid the amount that had been deposited in his PMOD account less the withdrawals he had made while incarcerated. In accordance with Department policy, Givens did not receive any of the interest that had accrued on his account.

Givens commenced this action against the Department and assorted state officials by filing a complaint in the Northern

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District of Alabama. Givens alleged the Department's refusal to allow him to collect the interest that had accrued on his PMOD account (1) constituted a wrongful taking under both federal and state law, and (2) violated § 14-8-35(4) of the Alabama Code, which prohibits the *1066 exploitation of inmates. The district court dismissed the takings claims, concluding Givens had no property interest in the interest on his account. The district court also dismissed the claim based on the alleged violation of § 14-8-35(4) on the ground it was simply not "cognizable." This appeal followed.

II. STANDARD OF REVIEW

[1] We review the district court's dismissal of a complaint for failure to state a claim de novo. *Behlen v. Merrill Lynch*, 311 F.3d 1087, 1090 (11th Cir.2002).

III. DISCUSSION

We are asked to decide only whether the district court erred in dismissing Givens's claims that an unlawful taking occurred. [FN3]

FN3. Givens initially claimed the Department's conduct also violated § 14-8-35(4) of the Alabama Code. Given that (1) the district court concluded this claim was not cognizable, and (2) Givens did not mention it in the

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argument section of his brief, we conclude he has abandoned it. *See* KMS Rest. Corp. v. Wendy's Int'l, Inc., 361 F.3d 1321, 1328 n. 4 (11th Cir.2004).

[2] The Takings Clause in the Fifth Amendment, which was made applicable to the States through the Fourteenth Amendment, provides that " 'private property shall not be taken for public use without just compensation.' " *Phillips v. Washington Legal Found.*, 524 U.S. 156, 163-64, 118 S.Ct. 1925, 1930, 141 L.Ed.2d 174 (1998) (quoting U.S. Const. amend. V). The Alabama Constitution contains virtually identical wording. *See* Ala. Const. art. 1, § 23. Thus, to state a Takings claim under either federal or Alabama law, a plaintiff must first demonstrate that he possesses a "property interest" that is constitutionally protected. *See* *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000-01, 104 S.Ct. 2862, 2871, 81 L.Ed.2d 815 (1984); *Penn Cent. Transp. Co. v. New York*, 438 U.S. 104, 125, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978); *Jackson v. Birmingham Foundry & Mach. Co.*, 154 Ala. 464, 45 So. 660, 662-63 (Ala.1908). Only if the plaintiff actually possesses such an interest will a reviewing court then determine whether the deprivation or reduction of that interest constitutes a "taking." *Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1198 (9th Cir.1998).

[3] The Takings Clause

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protects private property; it does not create it. *See Phillips*, 524 U.S. at 164, 118 S.Ct. at 1930. Thus, to determine whether a particular property interest is protected, we look to "existing rules or understandings that stem from an independent source such as state law." *Id* (internal quotation marks and citation omitted); *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 161, 101 S.Ct. 446, 451, 66 L.Ed.2d 358 (1980).

Here, Givens argues that, as an Alabama inmate, he had a property interest in the interest that accrued on his PMOD account. Given that whether an Alabama inmate possesses such a property interest is a question of first impression in this Circuit, we find it helpful to begin by setting forth the cases that shape our analysis.

A. *Relevant Precedent*

We commence by briefly mentioning two relevant Supreme Court decisions. In *Webb's Fabulous Pharmacies*, the Supreme Court held that a state violated the Takings Clause when it took for itself--pursuant to statutory authority-- the interest that accrued on an interpleader fund deposited in the registry of a county court, where a fee--prescribed by a different statute--was also charged for the clerk's services in receiving the fund into the registry. ***1067** 449 U.S. at 164, 101 S.Ct. at 452. More recently, in *Phillips*, the Court held that the interest paid on IOLTA accounts [FN4] is the property of the client. 524 U.S. at 160, 118

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S.Ct. at 1928.

FN4. *Phillips* involved a state that had adopted an Interest on Lawyers Trust Account (IOLTA) program in which certain client funds held by an attorney were deposited in bank accounts. 524 U.S. at 159-160, 118 S.Ct. at 1927-28. The interest generated was given to foundations financing legal services for low income persons. *Id.* at 160, 118 S.Ct. at 1928.

We next turn to the relevant published decisions from our sister Circuits. In *Schneider*, the Ninth Circuit held inmates have a protected property interest in the interest that accrues on their accounts, even where state statute provides otherwise. 151 F.3d at 1201. In reaching this conclusion, the Ninth Circuit relied on both *Phillips* and *Webb's Fabulous Pharmacies*. 151 F.3d at 1199. And, as did the Supreme Court, the Ninth Circuit stressed the pedigree of the common law maxim that interest should follow principal. *See id.* at 1200-01. [FN5]

FN5. The Ninth Circuit later clarified that, where a state statute establishes the interest earned on inmate accounts is to be used to cover the costs of administering them, there is no "taking" when the interest is used for that

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purpose. *See* *McIntyre v. Bayer*, 339 F.3d 1097, 1101-02 (9th Cir.2003) (concluding that there must be "net loss" to the inmate for a "taking" to have occurred). The Fifth Circuit reached the same result on similar facts in *Hatfield v. Scott*, 306 F.3d 223 (5th Cir.2002), concluding there was no need to determine whether the state statute at issue established a property interest, given that there was no "taking" and the inmate had waived whatever right to the interest he had. *Id.* at 229.

The Fourth Circuit reached the opposite result in *Washlefske v. Winston*, 234 F.3d 179 (4th Cir.2000). In that case, Virginia had directed its Department of Corrections to invest prisoner funds at its discretion and to use any interest earned for the benefit of the general prison population. *Id.* at 181. The Fourth Circuit ultimately held Virginia inmates did not have a protected property interest in the interest on their accounts. *Id.* at 185-86. In reaching this conclusion, the Fourth Circuit noted that, because inmates at common law traditionally had no right to earn wages, any rights they currently possessed extended only so far as Virginia statute or regulation provided. *Id.* at 184-86 (distinguishing *Phillips* and *Webb's Fabulous Pharmacies*). The Fourth Circuit further

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noted that, because neither statute nor regulation provided that inmates were to receive the interest on their accounts, inmates had no property right in any interest that accrued. *Id.* at 185-86. Rather, all the inmates had was a limited property right in the amounts deposited in their names--specifically, the inmates possessed the limited right to access their deposits when permitted by statute, regulation, or policy. *See id.*

B. *Analysis*

[4] Here, like the Ninth Circuit in *Schneider* and the Fourth Circuit in *Washlefske*, we are presented with a state scheme--Alabama's--that prohibits inmates from receiving the interest that accrues on their accounts. Our task is thus to determine whether an Alabama property interest is implicated--i.e., either one that existed at the time Alabama adopted the common law of England, or one that Alabama subsequently created. [FN6]

FN6. Since Alabama adopted the common law of England many years ago, *see* Ala.Code § 1-3-1 (adopting English common law to the extent it was not inconsistent with "the Constitution, laws, and institutions" of Alabama); *see also Neville v. Cheshire*, 163 Ala. 390, 50 So. 1005, 1006 (Ala.1909) (observing that the common law of Alabama is rooted in ancient English

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common law), there are two likely grounds for arguing that a particular property interest is recognized in the state: (1) the property interest existed in England at the time Alabama adopted English common law and is therefore part of Alabama law; or (2) Alabama subsequently created the property interest by--for example--enacting a statute, adopting a regulation, or implementing a policy. *See, e.g.*, *Washlefske*, 234 F.3d at 1185; *Schneider*, 151 F.3d at 1200-01.

*1068 1. *Whether a Property Interest Existed at Common Law*

We now address whether Alabama inmates have a common law property right in the interest that accrues on their accounts. *See Washlefske*, at 184-85; *Schneider*, 151 F.3d at 1200-01. Certainly, non-inmates have such a property right. *See, e.g.*, *Phillips*, 524 U.S. at 165-66 & n. 5, 118 S.Ct. at 1930-31 & n. 5 (listing cases applying the common law maxim that interest should follow principal); *Freeman v. Young*, 507 So.2d 109, 110 (Ala.Civ.App.1987) (quoting *Webb's Fabulous Pharmacies* and holding that, where one party in an interpleader action receives half of the amount deposited with the court, that party is entitled to half of the interest as well). Givens argues the interest-follows-principal

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maxim should apply to inmate accounts. We disagree for three reasons.

First, Givens's argument ignores both his status as an inmate and the fact that, at common law, such status was significant. Although non-inmates enjoyed an assortment of property rights at common law, inmates did not:

> [A]ll property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for that degree of natural freedom which every man must sacrifice when he enters into social communities. If therefore a member of any national community violates the fundamental contract of his association, by transgressing the municipal law, he forfeits his right to such privileges as he claims by that contract; and the state may very justly resume that portion of property, or any part of it, which the laws have before assigned him.

1 William Blackstone, Commentaries *299. Indeed, at common law an inmate not only did not have a property right in the product of his work in prison, but he also could be forced to forfeit all rights to personal property. *See* Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 682, 94 S.Ct. 2080, 2091, 40 L.Ed.2d 452 (1974):

> The convicted felon forfeited his chattels to the Crown and his lands escheated to his lord; the convicted traitor forfeited all of his property, real and personal, to the Crown. The basis for these forfeitures was that

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a breach of the criminal law was an offense to the King's peace, which was felt to justify denial of the right to own property.

(citations omitted); 4 William Blackstone, Commentaries *385 (explaining the extent to which a convicted felon could be forced to forfeit various property interests); *see also* United States v. Kozminski, 487 U.S. 931, 943-944, 108 S.Ct. 2751, 2760, 101 L.Ed.2d 788 (1988) (observing that requiring inmates to work without pay does not violate the Thirteenth Amendment's prohibition against involuntary servitude); Downey v. Bituminous Casualty Corp., 349 So.2d 1153, 1155 (Ala.1977) (observing that inmate labor does not have to be voluntary). Thus, under traditional common law in Alabama, an inmate had no property rights. Accordingly, we cannot accept Givens's suggestion that the common law maxim that interest follows principal applies where an inmate is involved.

Second, the only case directly on point that favors Givens is *Schneider*, and that case frames the common-law inquiry too ***1069** broadly. *See* 151 F.3d at 1200-01. Rather than merely asking whether interest followed principal at common law, *see id.*, the Ninth Circuit should have instead analyzed the extent to which inmates at common law enjoyed property rights. Because the Ninth Circuit did not do this, we are reluctant to construe *Schneider* as persuasive authority in this Circuit.

Third, as the Fourth Circuit

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noted in *Washlefske*, the Supreme Court's holdings in *Phillips* and *Webb's Fabulous Pharmacies*--on which Givens relies--*assumed* that a *complete* private property right existed in the principal:

> The holding in *Phillips*, as well as that in *Webb's Fabulous Pharmacies*, *assumes* that the claimants had a traditional private property right in the principal and concludes only that, as an incident to that ownership, the claimants also had a property right in the interest. *See Phillips*, 524 U.S. at 164, 118 S.Ct. 1925, 141 L.Ed.2d 174 (noting its assumption that clients' funds deposited in attorneys' trust accounts remained "freely available to the clients upon demand"); *Webb's Fabulous Pharmacies*, 449 U.S. at 160, 101 S.Ct. 446, 66 L.Ed.2d 358 (beginning its analysis with the observation that the "principal sum deposited in the registry of the law plainly was private property").

234 F.3d at 185. By contrast, in this case, Givens has at most a *limited* property right in the principal. Like the inmate in *Washlefske*, Givens is not free to receive the amounts deposited in cash, make withdrawals whenever he wants, or spend money without the Department's approval. *See id.*; Ala.Code § 14-8-6 (limiting the extent of an Alabama inmate's property interest in his earnings); Dep't of Corrs. Admin. Reg. No. 410, § VII (Sept. 2, 1997) (same). Thus, in regards to his interest-bearing account,

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Givens lacks the full rights of "possession, control, and disposition" a non-inmate would enjoy. *See* Phillips, 524 U.S. at 170, 118 S.Ct. at 1933. Therefore, neither *Phillips* nor *Webb's Fabulous Pharmacies* stand for the proposition that Givens has the same right as a non-inmate to receive interest.

For these reasons, we conclude Alabama inmates do not have a common law property right to the interest that accrues on their accounts.

2. *Whether Alabama Created a Property Interest by Enacting a Statute, Adopting a Regulation, or Implementing a Policy*

Although common law does not vest Givens with a property interest in the interest on his account, Alabama could still have created a property interest by enacting a statute, adopting a regulation or implementing a policy. *See Tellis v. Godinez*, 5 F.3d 1314, 1316-17 (9th Cir.1993) (holding that because Nevada statute provided that the state's inmates were entitled to the interest on their accounts, the inmates had a property interest in any interest that accrued); *see also Washlefske*, 234 F.3d at 185 (stating that if no right existed at English common law, a state may subsequently create one); *Schneider*, 151 F.3d at 1200-01 (noting same but also commenting that, in doing so, a state may not encroach upon "traditional 'old property' interests"). In this case, however, we conclude Alabama created no such property interest.

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So far as inmates of the state are concerned, §§ 14-8-1 to 14-8-10 of the Alabama Code are the only statutory provisions that bear on work release. None of these sections mention interest. The only provision even tangentially related is § 14-8-6, which provides:

> The employer of an inmate involved in work release shall pay the inmate's *1070 wages directly to the Department of Corrections. The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. *In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate.* After all expenses have been deducted by the department, the remainder of the inmate's earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala.Code § 14-8-6 (emphasis added). The only property interest this provision could be said to provide an inmate is a limited property interest in the *amount of his wages* that remains after the Department has deducted a portion that is (1) "appropriate and reasonable," and (2) not in excess of 40% of the total *wages* earned. *See id.* In short, the Alabama statutes are silent as to what is to

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become of any interest earned. Alabama statutory law thus does not vest Givens with a property interest in the interest that accrues on his account. *See Washlefske*, 234 F.3d at 185 (noting that, where a state statute creates a property right, the right extends only so far as the statute expressly provides).

We next consider whether Alabama regulation or policy vests inmates with a property right in the interest earned on their accounts. Given that the relevant regulation is silent regarding interest, *see* Dep't of Corrs. Admin. Reg. No. 410 (Sept. 2, 1997), and Department policy provides that inmates are *not* to receive any such interest, Ala. Dep't of Corr. Manual of Accounting Procedures for Insts. and Cmty. Based Facilities, ch. 5, at 26, we conclude that neither regulation nor policy vests Alabama inmates with such a right either.

In sum, we conclude Alabama has not created a property interest for its inmates in the interest that accrues on their accounts.

IV. CONCLUSION

For the foregoing reasons, we conclude that, at common law, Alabama inmates do not have a property interest in the interest that accrues on their accounts. We further conclude Alabama has not created such an interest via statute, regulation, or policy. Accordingly, no recognized property interest is implicated here, and, absent such an interest, there is no "taking."

AFFIRMED.

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381 F.3d 1064, 17 Fla. L. Weekly Fed. C 933

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- 03-14086 (Docket)

(Aug. 14, 2003)

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT 07 2004
THOMAS K. Kahn
CLERK

No. 03-14086-AA

JOSEPH G. GIVENS, an individual,

Plaintiff-Appellant,

versus

ALABAMA DEPARTMENT OF CORRECTIONS,
MICHAEL W. HALEY,
individually,
BELTINA CARTER,
individually and in her official capacity, CHARLES HADLEY,
individually and in his official capacity, DONAL CAMPBELL,
in his official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

BEFORE: BLACK and KRAVITCH, Circuit Judges, and STROM*, District Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:

S/ BLACK
UNITED STATES CIRCUIT JUDGE

C

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03 JUL 14 PM 3: 45

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JOSEPH G. GIVENS,
Plaintiff,

vs.

ALABAMA DEPARTMENT OF CORRECTIONS, *et al*,
Defendants.

Civil Action No. CV-03-S-0484-NE

ENTERED JUL 1 4 2003

MEMORANDUM OPINION

Plaintiff, Joseph G. Givens, is a former prisoner of the Alabama Department of Corrections ("ADOC"). He was incarcerated at the Decatur Work Release Center, a community-based facility operated by ADOC, from February 17, 1994 until September 6, 2002, when he was released[1]. During his assignment to that work-release facility, Givens was employed by a private entity, and the wages paid by his employer were deposited into a Prisoner Money on Deposit bank account ("PMOD") controlled by ADOC.[2] Plaintiff commenced this action by filing a "Class Action Complaint." No class has been certified, however. The gravamen of plaintiff's complaint is that he and other ADOC work release inmates were not paid interest on funds deposited in PMOD accounts, in violation of federal and state laws.[3] Defendants subsequently filed a motion to transfer this action

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[1] *See* answer (doc. No. 9) ¶ 1, and, defendant's brief (doc. No. 14), at 2

[2] Complaint ¶ 4.

[3] *Id*

to the United States District Court for the Middle District of Alabama (doc. no. 7). After considering that motion, the court had cause to question whether plaintiff has stated a claim upon which relief can be granted. Consequently, the court ordered the parties to submit briefs addressing whether ADOC's failure to pay interest on funds deposited in PMOD accounts constitutes a violation of federal or state laws.[4] Both parties submitted briefs and evidentiary materials, and this issue now is ripe for adjudication.

The parties agree that a convict does not have a constitutional right to work for pay while incarcerated.[5] Even so, Alabama law provides a limited privilege for eligible state prisoners to earn and save money during their incarceration. *See* Ala. Code §§ 14-8-1 to -10 *(1975)* (1995 Replacement Vol). A participant does not have unfettered access to his wages, however. Rather, Alabama law specifies that

> [t]he employer of an inmate involved in work release shall pay the inmate's wage directly to the Department of Corrections. *The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate,* After all expenses have been deducted by the department, the remainder of the inmate' s earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala. Code §§ 14-8-6 (emphasis supplied). ADOC's "Manual of Accounting Procedures for

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[4] *See* doc. No. 12 (order entered April 29, 2003).

[5] Plaintiff's reply brief, at unnumbered page 2.

Institutions and Community Based Facilities" sets forth the State's policy regarding the disposition of interest accrued on the funds deposited in PMOD accounts:

> It is the position of the Department that inmates are not entitled to receive interest on PMOD accounts. The Department maintains the PMOD accounts as a convenience for the inmates. In doing so, considerable costs are incurred. However, no service fees are imposed to offset any of those costs. *Interest earned on the PMOD funds serves to defray at least a portion of the costs.*[6]

Plaintiff does not consider the manual to be a dispositive "regulation."[7] He observes that "[t]he State of Alabama has not mentioned the interest on these accounts in any of its regulations or code sections."[8] Plaintiff argues that, in the absence of any regulation or statute providing that interest on a PMOD account shall not be paid, a prisoner should be given the benefit of the common law presumption that "interest follows principal."[9]

Plaintiff's theory is unconvincing for at least two reasons. First, the common-law presumption that "interest follows principal" was developed in the context of ordinary banking transactions, and is not controlling in the situation at hand. Plaintiff is not a typical depositor, but a prisoner permitted to earn and save

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[6] Defendant's evidentiary submissions, Exhibit 4 (ADOC Accounting Procedures Manual), at 5-13 (emphasis supplied).

[7] The term "regulation" is not included in the "definitions" section of the relevant part of the Alabama Code. *See* Ala. Code § 14-8-1 (1995 Replacement Vol.) A generally-accepted definition, as the term "regulation" is employed here, is "[a] rule or order, having legal force, issued by an administrative agency or local government." *Black's Law Dictionary* 1289 (7th ed. 1999).

[8] Plaintiff's brief, at unnumbered page 3.

[9] *Id.* at 3-4.

money pursuant to a statutory privilege. Second, because the privilege to deposit funds in PMOD accounts is created by statute, the rights ancillary to that privilege also are governed by statute. In other words, in the absence of a statutory or regulatory provision providing otherwise, there is no basis for inferring that the award of a limited privilege confers with it the benefit of all of the presumptions that are typically associated with the privilege's common-law, banking analog. *See, e.g., Washlefske v. Winston,* 234 F.3d 179, 185-86 (4th Cir.2000) ("Because Washlefske never had a private property interest in these accounts as defined by common law, but only an interest defined by statute - a statute that gives him limited rights to those funds- he cannot claim that a property interest based on traditional principles of property law was taken."). *But see Schneider v. California Department of Corrections,* 151 F.3d 1194, 1201 (9thCir.1998) (holding that prisoners have a protected property interest in the interest earned on personal funds deposited into an inmate trust account).

Another judge of this court has held that a prisoner's claim for interest accrued on wages deposited into a work release program account is not viable.

> Prisoners have no constitutional right to employment nor to earn wages while incarcerated. Under the provisions of §§ 14-8-1 Code of Alabama 1975, *et seq.,* prisoners may be granted this privilege. The same Act which grants the privilege provides that, "After all expenses have been deducted by the board, the remainder of the inmate's earnings shall be credited to his account with the board. Upon his release all moneys being held by the board shall be paid over to the inmate." §§ 14-86 Code of Alabama 1975. No statutory provision is made for interest. The board is further authorized to adopt regulations concerning the disbursement of earnings. There is no statutory right to interest on such earnings. The court does not deem there to be a constitutional right to interest on earnings which are allowed by permission of statute. Forced 'labor by prisoners even without pay does not

> violate the Thirteenth Amendment.. .. There is no allegation that plaintiff has ever been promised that he would be paid interest. The "denial of interest" claim does not state a cause of action.

Turner v. *Bowen,* No. CV82-PT-2566-S, slip op. at 1-2 (N.D. Ala. Feb. 25,1983) (Propst, J.) (some citations omitted), *aff'd on other grounds,* 726 F.2d 753 (11th Cir. 1984) (Table).

This court holds that plaintiff's claim to interest on funds deposited in ADOC PMOD accounts, whether derived from the United States Constitution, the Alabama Constitution of 1901, Alabama Code § 14-8-35(4),[10] or common-law principles, is not cognizable.[11] Accordingly, all of plaintiff's claims are due to be dismissed. An appropriate order will be entered contemporaneously herewith.

DONE this 14th day of July, 2003.

s/Lynnwood Smith
United States District Judge

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[10] The cite section provides, in pertinent part, that the "[e]xplotation of eligible prisoners in any form is prohibited." Ala. Code § 14-8-35(4) (1995 Replacement Vol.)

[11] Plaintiff's claims that defendants' failure to "insure that the PMOD account was placed into an FDIC insured Alabama bank un an interest account" violates the Fifth Amendment of the United States Constitution and Article I, Section 23, of the Alabama Constitution of 1901, are similarly unsupported. *See* Complaint ¶¶ 18, 20. Notably, defendants assert that each PMOD account is, in fact, maintained in a "local FDIC insured bank." Answer ¶ 16.

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